

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (Including Joint Meeting with Redevelopment Agency)
Date of Meeting:	August 19, 2003
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Regular Session)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Dixon, and Councilmembers Gomez, Livengood, and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following item listed on the agenda:

1. **CONFERENCE WITH LABOR NEGOTIATOR**

(Pursuant to Government Code Section 54957.6)

Agency Negotiators: Cherie Rosenquist, Ed Kreisberg, Thomas J. Wilson

Employee Organizations: IAFF Local 1699, LIUNA, MEA, MPOA, MSA, ProTech, and Unrepresented

Mayor Esteves adjourned the meeting to closed session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Dixon and Councilmembers Gomez, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no closed session announcements.

PLEDGE

Mayor Esteves led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of August 5, 2003, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Dixon, Gomez.

Ayes: 5

SCHEDULE

Vice Mayor Dixon reported the August 27th VTA/BART meeting had been put off to September. Councilmember Polanski reported the 50th Anniversary Committee would meet on September 29 at 7:00 p.m.

MOTION to approve the Schedule of Meetings as amended.

M/S: Gomez, Polanski.

Ayes: 5

PRESENTATIONS

Mayor Esteves presented a Certificate of Appointment to Syed Mohsin in recognition of his recent appointment as a regular member of the Community Advisory Commission for a term expiring in January 2006.

Mayor Esteves read a Commendation recognizing the formation of the Milpitas NAACP Branch Committee and presented it to Annie Handy.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks, including any visual or technology-assisted presentations of any kind, be limited to two minutes or less, and noted that the City Clerk would be using the timer and when the red light at the podium came on, two minutes would be up.

Ola Hassan thanked the Council and staff for their support in helping him open his business “Ola’s Corners”, invited the Council to visit his restaurant to see what had been accomplished in this historical building, and said he hoped to address the Council in the future regarding a recent request he had made to the City.

Don Ryan, President, Milpitas Lions Club, invited everyone to participate in the White Cane Awareness Day Walk-A-Thon on October 11, 2003, 9:00 a.m. – Noon, at Plaza de Cesar Chavez Park in San Jose.

Bert Cruz, San Jose, representing Milpitas Basketball Association, approached the podium to speak. Mayor Esteves informed Mr. Cruz that the Basketball Association’s request was on the agenda and it would be appropriate for Mr. Cruz to speak when the Council considered the item, explaining that Citizens Forum was for items not on the agenda.

ANNOUNCEMENTS

Councilmember Polanski thanked the members of the community who held neighborhood “National Night Out” events and neighborhood picnics since the last Council meeting. Councilmember Polanski said she attended several, which were wonderful, a few members of the community did it for the first time and had a good response, and thanked everyone that participated throughout the community. Councilmember Polanski congratulated the Milpitas Chamber of Commerce for another successful Art & Wine Summer Festival. Councilmember Polanski asked the Mayor to adjourn the meeting in memory of former Senior Advisory Commission member Carlos Fabregas, who passed away recently, and Bea Padovano, a long-time volunteer with the Brown Bag Program at the Senior Center, who also passed away recently.

Vice Mayor Dixon congratulated the Chamber on the Art & Wine Summer Festival, though she had to miss it, thanked the Bicycle Transportation Advisory Committee that again hosted the bicycle corral, and extended a special thanks to new BTAC Commissioner Nawal Stanojevic for volunteering at the corral. Vice Mayor Dixon explained the reason she missed the festival was, she was proud to announce, that she was a proud new grandmother for the first time – daughter Heather and Jason welcomed into the world Jordyn Emily Marie Pagan on August 12, 2003. Vice Mayor Dixon also announced that her son, Christopher, proposed to his girlfriend of eight years, Chloe Little, daughter of Randy and Janet Little of Milpitas.

Mayor Esteves congratulated the Kiwanis Club for their successful ChildSpree at Mervyn’s and thanked the Federation of India Association of Northern California for inviting him to represent Milpitas at their major festival in Fremont. Mayor Esteves read a letter from the Association of Bay Area Governments (ABAG) in support of the Milpitas Midtown Specific Plan’s entry to the American Planning Association’s 2004 National Awards Program. Mayor Esteves thanked staff and Vice Mayor Dixon, who led the committee, for their work on the Midtown Plan.

AGENDA

MOTION to approve the agenda as submitted.

M/S: Polanski, Dixon.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar. Mayor Esteves clarified that Item 22 was for the purchase of software licenses and not for software as indicated in the title.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended to clarify Item 22, in accordance with the staff recommendations.

M/S: Gomez, Polanski.

Ayes: 5

***3. Appointment**

Approved the Mayor's appointment of Judi Leonard to the Alternate No. 2 position on the Parks, Recreation, and Cultural Resources Commission with a term expiring June 2004.

- *5.
Family Child Care
Assistance Grants**
- Approved a \$500 grant from the Individual Family Child Care Assistance Fund to: Alejandra Araya, Sherry Clanton, Yan Ding, Donna Egusa, Kim Lagman, Judy Ligon, and Samiha (Suzie) Samawi.
- *6.
Youth Sports
Assistance Grants**
- Approved eleven (11) Youth Sports Grants as follows: Individual Grants of \$500.00 to Nastassia Hamor, Anthony Hoag and Martin McKeefery, \$330.00 to Randy Zappia and \$30.00 each to Ricky, Corina, Riley, and Rustin Blas and \$1,000.00 group grants to Milpitas Youth Soccer Club, PAL Soccer and Little League South as recommended by the Parks, Recreation and Cultural Resources Commission leaving a balance of \$5,050.00 for the remainder of the fiscal year.
- *9.
Grant Funding for
Terrorism Grants**
- Approved the grant funding agreement between Santa Clara County and the City of Milpitas FOR Terrorism Grants.
- *10.
Volunteer Center of
Silicon Valley**
- Approved agreement of the MOU between the City of Milpitas and the Volunteer Center of Silicon Valley.
- *11.
Commission Bylaws**
1. Approved Economic Development Commission bylaws;
 2. Approved the amendments to the ten City Commission bylaws; and
 3. Approved the exception to the residency requirement for Telecommunications Commission member Ravi Gopalarao to allow him to serve until the expiration of his current term.
- *12.
Ordinance No. 239.2
Storm Drain Connection Fees**
- Waived full reading of the ordinance and adopted Ordinance 239.2 adding Section 15 of Title XI, Chapter 16, of the Milpitas Municipal Code.
- *13.
Parc West Apartments
(Project No. 3113)**
- Adopted Resolution No. 7343 granting final acceptance and release of the bond.
- *14.
Great Mall Median
Landscaping/Irrigation
(Project No. 4133)**
- Authorized the City Manager to enter into the agreement with ACE in the not-to-exceed amount of \$20,000, subject to approval as to form by the City Attorney.
- *15.
Wet Weather Monitoring
Evaluation (Project No. 6102)**
- Authorized the City Manager to execute the agreement, subject to approval by the City Attorney as to form, in the not-to-exceed amount of \$84,810 for wet weather monitoring and updated sewer capital improvement project recommendations.
- *16.
Construction Inspection &
Material Testing
(Various CIP Projects)**
- Authorized the City Manager to execute the agreements with URS Greiner, Inc., and 4LEAF, Inc in an amount not-to-exceed \$300,000 per each agreement, subject to approval as to form by the City Attorney.
- *17.
Home Depot at the Great Mall
(Project No. 3118)**
- Authorized the City Manager to execute Amendment No. 2 to Permittee Dedication and Improvement Agreement, subject to approval as to form by the City Attorney.
- *18.
Street Sweeping Services**
- Approved six-month extension for Street Sweeping services with Enviro-Commercial Sweeping
- *19.
Frank Addiego
Consulting Engineers
(Various CIP Projects)**
- Authorized the City Manager to execute a professional services contract with Frank Addiego Consulting Engineers, based on time and materials not-to-exceed \$100,000, subject to approval as to form by the City Attorney.

***20.
Sports Center Master Plan
(Project No. 8149)**

Authorized the City Manager to execute a professional services contract with DEG Consulting Engineers for the Sports Center Master Plan Improvements (Project No. 8149), based on time and materials not to exceed \$60,000, subject to approval as to form by the City Attorney.

***21.
Telecommunications
Engineering Associates
(Project No. 3389)**

1. Authorized the City Manager to amend the agreement with Telecommunications Engineering Associates for engineering services related to the Public Safety Dispatch Center in an amount not to exceed \$11,000
2. Extended the agreement until September 30, 2004 subject to approval as to form by the City Attorney.

***22.
GIS Software Purchase
(Project No. 8112)**

Approved the purchase of GIS software from Intergraph Corporation for the City of Milpitas in an amount not to exceed \$20,000.

***23.
Upgrade to Windows 2003
(Project No. 8109)**

Authorized the purchase of 35 standard edition Microsoft Windows Server 2003 and 5 enterprise edition Microsoft Windows Server 2003 software licenses in an amount not to exceed \$29,000.

***24.
Payroll Registers**

Approved Payroll Registers for the periods ending July 12, 2003, in the amount of \$1,640,390.92, and July 26, 2003, in the amount of \$1,672,440.61.

PUBLIC HEARING

**1.
HUD Storm Grant
Progress Report**

Associate Engineer Marilyn Nickel reported this hearing was a Federal requirement to provide an update on the \$1 million Federal Housing and Urban Development (HUD) grant for reimbursement of 1998 winter storm expenses. Ms. Nickel further reported that in July 2003, the City received an additional \$320,000 in supplemental funding, bringing the total grant amount to \$1.32 million.

Councilmember Livengood inquired what "N/A" meant on page 5 of the report, asking if it meant there were no contracts. Ms. Nickel responded that she would need to update that section as there was some money spent. Councilmember Livengood inquired about "TBD" on page 6. Ms. Nickel said that section had not been completed yet and would be filled in. Councilmember Livengood commented that there were other "N/As" and what did they mean. Ms. Nickel said she believed it was not applicable at this point. Councilmember Livengood noted that "unknown" was checked for "number of homeless beneficiaries" on page 9 and asked if that meant the number was not known. Ms. Nickel responded we really don't know. Councilmember Livengood asked if there was a way to find out how many homeless were receiving benefits. Ms. Nickel said it would not be possible to find out because the benefits accrue to the community as a whole.

Councilmember Livengood expressed concern that the report wasn't as complete as it should be with a few too many "N/As" and "TBDs" and said he wanted to make sure it accurately recording the impact on the community.

Mayor Esteves asked if there was a deadline for submitting the report. Ms. Nickel responded the deadline was August 31, 2003.

Vice Mayor Dixon said the question "does the National objective meet the slum blight area's objective" caught her eye and again the "N/A" box was checked. Vice Mayor Dixon asked if there was something staff followed, such as a benchmark, to fill in those questions or was that something staff came up with because staff wasn't told to get specifics or that was how it's been done in the past? Ms. Nickel said she would have to check with Principal Housing Planner Felix Reliford on this.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Dixon, Livengood.

Ayes: 5

MOTION to approve submittal of the annual report and direct staff to follow-up with responses to the questions posed by the Council.

M/S: Dixon, Livengood.

Ayes: 5

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. CALL TO ORDER

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 7:25 p.m.

RA2. ROLL CALL

Present were Mayor Esteves, Vice Mayor Dixon, and Agency/Councilmembers Gomez, Livengood, and Polanski.

RA3. MINUTES

MOTION to approve the Redevelopment Agency minutes of August 5, 2003, including joint meeting with the City Council, as submitted.

M/S: Dixon, Polanski.

Ayes: 5

RA4. AGENDA

MOTION to approve the agenda and consent calendar as submitted.

M/S: Dixon, Livengood.

Ayes: 5

RA5. PARC NORTH ASSOCIATES MOU

Assistant City Manager Blair King reported this project consisting of a total of 285 town home condominiums was in Midtown and staff was recommending Agency assistance to allow it to proceed. Mr. King further reported that in January 2003, the Council authorized staff to enter into negotiations with RGC Court Homes in order to facilitate the development of a residential project on the Lockheed Martin warehouse site at the corner of Curtis and Hammond; an MOU was now before the Agency that provided grant and loan assistance for the construction of 58 deed-restricted, affordable housing units consisting of 18 very low income units, 6 low income units, and 34 moderate income units. Mr. King said in terms of Agency assistance, staff was proposing that the Agency contribute by providing \$1,823,480 for reimbursement and in-lieu fees; in addition, the Agency would provide \$1,974,000 for second loans, for a total of \$3,797,480. Mr. King explained why staff felt this was a good level of contribution noting that the project would produce approximately \$800,000 annually in new property tax and the Agency would recover its grant assistance in a little over two years and all of its assistance in a little under five years. Mr. King commented that the applicant, Jim Murar, was present in the audience, staff thought this was a good proposal, it allowed a good recovery time, and staff was recommending that the Agency consider adoption of the MOU.

Vice Mayor Dixon asked Mr. King, for the benefit of the public, to provide an explanation on deed restrictions and if someone in Milpitas were to enter into an agreement to buy one of these units, what would they legally be allowed to deduct on their income tax. Mr. King explained the deed restriction would be for 45 years to maintain the affordability of each residential unit; the project would be built in phases and the affordable units released in phases; and if during the 45 year period the owner were to resell, they would be obligated to resell to someone else that met the same income criteria that the unit was designated for.

Vice Mayor Dixon said she thought it was a very handsome looking project, she was familiar with the D.H. Horton Company, and was glad to see the Parc North Associates had teamed with such a reputable company.

Councilmember Polanski said she was very pleased to see the mixture of affordability from the moderate to the very low and ask if staff would provide information on how many

affordable units the City has been able to secure in the Midtown area and throughout the City because she thought it was important for the entire community to know that we do have these units and we have developers who are willing to work with the City on that. Mr. King responded at the Crossing Apartments there were 94 units; Monte Vista Apartments had 153 units; Parc Metro 96; Summerfield Homes 22, to give an example of some of the affordable housing the Agency has participated with in the past.

Mayor Esteves said he wanted to highlight the issue of affordable housing because sometimes not everybody knows what is affordable housing and how much help the City is really giving to this kind of development. Mayor Esteves reported that the MOU suggests grants and loan assistance to facilitate the construction of 58 affordable housing units, it commits \$1.8 million in affordable housing funds for grants related to permits, fees, and infrastructure and at the same time \$1.9 million in second loans, for a total of \$3.8 million to support these affordable homes. Mayor Esteves asked for clarification that the City is supporting these homes on the average of \$60,000 to \$65,000 per unit. Mr. King responded the rate of subsidy per unit in the past for Milpitas has ranged from about \$136,000 per unit down to about \$20,000 per unit but probably the better measurement was the recovery period based upon the outlay of the tax increment fund.

Jim Murar, representing the applicant, said they were very pleased and wanted to congratulate the entire City on the vision and energy put forth in the adoption of the Milpitas Midtown Plan; he thought it was one thing to just adopt something but another thing to facilitate moving forward with the implementation. Mr. Murar further stated he thought Mr. King did an excellent job in presenting the MOU and covered the major highlights in it; it should be noted the very low income units will be in the low \$100,000 price range, which was quite substantial; and as well as Redevelopment Agency funds, there were internal subsidies that the developers would be making also in order to reach those types of levels. Mr. Murar said it was a real team effort and he thought a win/win for the City, the community, the residents, and everybody involved.

MOTION to adopt Resolution No. RA212 approving a Memorandum of Understanding by and between the Redevelopment Agency of the City of Milpitas and Parc North Associates.

M/S: Dixon, Polanski.

Ayes: 5

**RA6.
AGENCY TAX ALLOCATION
BOND SERIES 2003
SCHEDULE**

City Manager Thomas Wilson reported the full Plan Amendment to the Redevelopment Plan and Agency was complete and now part of the Agency and included the extension of the Midtown area as a key component to the Redevelopment Agency District; the Agency's capacity to incur debt to engage in Redevelopment activities was extended as was the extension of the life of the Agency to the legal limit; and this provided the City with an opportunity to make Redevelopment an integral part of the community in the foreseeable future. Mr. Wilson said this was now the time to turn to implementing some of the benefits acquired through the Redevelopment Plan Amendment and staff was before the Council tonight to introduce the Council and the public to a preliminary financing plan, which would be proposed for consideration as we now move forward to look at how to implement the Midtown Specific Plan and some of the priority projects for the community.

Mr. Wilson reviewed the priorities of the proposed financial plan addressing a number of key priorities for the future of the Redevelopment Agency reporting that the first part of this was to take into consideration the use of the extension of the debt cap and the time line for incurring debt, which was accomplished by the amendment; the second thing staff was proposing in the financial plan was to cover the initial investments in the Elmwood purchase (\$44 million); the third item, estimated at \$50 million, was the combined cost of building the new library at the Senior Center (or old elementary school site) and the remodeling and addition to the facility of the present library on the City Center campus for the Senior Center; the fourth item proposed was to provide some of the dollars necessary to make sure that the Midtown Specific Plan will move forward effectively and \$30 million was proposed for those particular improvements to the infrastructure; and finally, in the course of issuing debt, you

have to pay fees and borrow money and the cost of issuance, bond insurance, underwriter's discount was estimated to be approximately \$8 million. Mr. Wilson said staff proposed to bring to the Council a plan that would issue old and new debt in the amount of about \$195 million with the issuance to be scheduled and potentially sold and placed into the inventory in November.

Assistant City Manager Blair King reviewed annual tax increment fund balance activities including debt service on the issuance, General Fund administrative reimbursement, the housing set-aside, tax increment pass-through, the ERAF shifts, annual payments to the County for the Elmwood property, and reserves and economic development opportunities. Mr. King reported Redevelopment reserves projected for June 2004 were \$40 million in cash and \$8 million in land assets. Mr. King said staff structured this in such a way that it was anticipated looking four to five years down the road (2007-08) that there would be another bond issue to fund various capital projects and staff anticipated looking at what it thought the growth would be and what the capacity would be; there would be new project money of approximately \$70 million available four to five years from now.

City Manager Wilson explained the reasons for moving aggressively were because the market was always changing and because of the uncertainty in the Legislature and potentially restructuring of Redevelopment. City Manager Wilson reported that staff would return on September 2, 2003, to ask the Agency/Council to approve a contract with an Underwriter, approve a financing Plan, and adopt a resolution of the Milpitas Public Financing Authority to act as the tax allocation bond issuer.

Vice Mayor Dixon inquired if the \$50 million for the Library and Senior Center took into account the \$5 million that the Council had designated for the Library. Mr. Wilson responded this was considered to be full financing and with this, staff would recommend the Council return the \$5 million; two percent of the Transient Occupancy Tax (TOT) also had been accruing at about \$1 million per year, and staff would suggest if this is successful, the Council might want to consider using the TOT for library operations. Vice Mayor Dixon said that would be important to her because even if the proposed County library bond measure passes, we will be behind because we're almost tripling the size of the library and they just don't have the funds.

Councilmember Livengood said he was happy with everything he had heard until we got into redirection of the \$5 million the Council had designated out of the General Fund and the monies the voters approved in 2002; he was not ready to change that course at this point and would need a lot more information, particularly what the voters were told when they voted on the measure. Councilmember Livengood said he recalled that the Council said we were going to build a library with it and an arts component; he was concerned about keeping faith with the voters, and before getting too far out there on this issue of what to do with the money raised through the TOT, he will need a lot more information on what the Council presented to the voters and what the voters approved; the \$5 million General Fund commitment reserve was nothing he was going to change, he was going to keep that there for the library, he was going to stay fast and firm on that; he would be willing to listen to what the presentation is and what the ideas are but he wanted to make sure before we give anybody the impression of what we are doing, we thoroughly investigate what we said and make sure the intention of the voters was completely and fully met.

Vice Mayor Dixon commented that the measure was advisory.

Mayor Esteves said he thought the Council had digressed and this discussion was not part of the agenda item.

Councilmember Polanski commented that she believed residents don't always understand that the City builds the building but it is a County library run by the County; a lot of times people think it is a City library; it was one of those benefits the City not only gives to its residents but to the surrounding neighbors; and she wanted to make sure when talking about the library that

is always clear. Councilmember Polanski congratulated staff and everyone for being visionary and pro-active and she was very pleased the City is able to do this for our citizens and she was very excited about the future.

Mayor Esteves inquired about interest costs commenting that when you have a shorter interest term, you end up with less interest expense. Mr. Wilson explained the plan to increase interest expense over time to not have to pay so much out annually.

MOTION to note receipt and file report on Redevelopment Tax Allocation Bond, Series 2003.

M/S: Dixon, Polanski.

Ayes: 5

***RA7.
CIVIC CENTER PROJECT
PROGRESS REPORT**

1. Approved release of retention for Corner Office and One Work Place.
2. Approved change orders and purchase orders for 4th floor improvements, included in the summary sheet.
3. Noted receipt and filed project closeout progress report.

**RA8.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:17 p.m.

The City Council meeting continued.

Mayor Esteves recognized the presence in the audience of Herbert Holloway, Quincy Jones, and Julia Jones and thanked them for being present.

REPORTS OF OFFICERS & BOARDS

**2.
Michael Harwood Training
& Community Room**

Fire Chief Bill Weisgerber reported that on July 3, 2003, the Council gave staff direction to proceed with developing a memorial in recognition of former Milpitas Fire Chief and long time resident Michael Harwood, who passed away last October. Chief Weisgerber reviewed the proposed memorial that would consist of a modest bronze dedication plaque mounted at the exterior door to the classroom and an interior wall memorial mounted at the front of the classroom. Chief Weisgerber reported that the Harwood family had reviewed both elements and was pleased with the proposal; in addition, community donations of \$1,000 had been received and staff was seeking Council approval for funding the balance. Chief Weisgerber further reported the project would take approximately two months to complete with a dedication anticipated in late October.

Councilmember Livengood said he thought this was a wonderful memorial, was glad Chief Weisgerber had worked with the family, and thanked those who donated their own money. Councilmember Livengood further stated he thought it was a fitting tribute to Mike and the years of service he gave to the citizens of Milpitas.

Councilmember Polanski said she agreed with Councilmember Livengood's comments, she thought this was wonderful but had a question about the two types of fonts for the inside plaque, commenting that she thought the Monotype Corsiva was very difficult to read. Chief Weisgerber said staff was leaning towards the Times Roman font but wanted to present two options. Vice Mayor Dixon said she also felt the font was difficult to read but thought the memorial was great and looked forward to the dedication in October.

MOTION to approve the dedication memorial package and expenditures for the bronze dedication plaque and wall art in recognition of former Fire Chief Michael Harwood's contributions to the City.

M/S: Dixon, Livengood.

Ayes: 5

4.

Information Services Director Bill Marion noted this item was on the agenda at the request

Comcast Service

of Councilmember Livengood. Mr. Marion reported that staff was in the midst of franchise renewal discussions with Comcast and has been soliciting public input through a variety of means and would like to take the opportunity tonight to solicit more public input for that process. Mr. Marion further reported that Eddie Garcia of Comcast was present in the audience so if there were some specific service items, Mr. Garcia had agreed to help address them, and staff would also incorporate comments from this evening as part of the franchise renewal.

Councilmember Polanski said she had completed an online survey and sent comments via email so she had already shared a lot of her input about reception quality (especially for the lower channels 2, 3, 4, and 5), response time for returning calls, etc. Councilmember Polanski said her neighbor, who could not be present, asked that his comments be shared regarding his concern that if you just take basic cable, then you do not get the TV Guide – you have to go up to another level and then have to click through a lot of channels with advertising to find a movie or something to watch; he thought anyone who subscribed to Comcast should receive the guide free, and he thought the movie selection was very poor. Councilmember Polanski commented on the fact that the cable television and Internet provider, though both Comcast, were separate areas and the City was only involved in the cable television franchise; however, most residents didn't know that they were separate and it seemed when there were problems with the cable television, there were also problems with Internet service. Councilmember Polanski said her neighbor was disappointed that Comcast wasn't more proactive with the worm that struck recently.

Mr. Marion commented that staff just last week received the results of the telephone surveys, 451 Milpitas households were called, the raw data showed that 57% of the respondents had similar requests regarding the channel line up, and the Telecommunications Commission last night looked over the draft information and put together some issues to consider in the franchise renewal. With respect to Internet service, that was an Interstate Commerce service and what staff tries to do is facilitate the communication with Comcast and explain that the City is not able to directly deal with Internet issues.

Councilmember Livengood said the reason he asked for this on the agenda was to give him and his colleagues an opportunity to comment on Comcast, as they were also customers, and since the City is getting ready to renew the franchise, he thought it was good to have some preliminary discussions. Councilmember Livengood further stated the genesis for this item was a very bad experience he had with Comcast over the last 30 days; the people he dealt with were all very nice, however, the response to his problem was pathetic and clearly unacceptable to him. Councilmember Livengood commented that while he didn't watch a lot of television, a lot of his constituents do and he was very unhappy with the run-around he got trying to get his system to work. Councilmember Livengood said he was under the impression there were certain standards Comcast was expected to meet; both times he was offered two different options – he could take an appointment date 4 to 6 days from when he called or he could be put on the supervisor's log and be called back in 48 hours (which turned out to be 48 hours from the date it gets on the log); he was six days without television both times; described the details of his experiences and stated it was not acceptable for Comcast, with the kind of resources they have, to be saying it will take six days to fix a problem and it was something the City needed to monitor. Councilmember Livengood also said he had a letter from a Mrs. Barnes concerning an issue she was unable to get resolved with Comcast and hoped that within the next couple of days Comcast would be able to rectify it. Councilmember Livengood said he hoped there would be some way in the contract renewal process to find out when these things are happening and get them rectified, commenting that Comcast never offered until the end to provide any kind of rebate. Mr. Marion commented that the current franchise was over twenty years old and contained no provision for credits; those were the kinds of things staff was looking at – to incorporate new standards and provide for credits.

Vice Mayor Dixon commented on poor reception, especially channels 2, 3, 5 and 7 which were at times blurred; when she changed to digital, the quality was worse and she had expected to have a clearer picture; on the days when it goes out, it may be for only 5 minutes

or an hour and a half but seems to happen more during the day; the movie selection was very poor and most of the new movies were on Pay-Per-View; the cost was ridiculous and she questioned why she was paying almost \$100 a month and hardly ever getting to see a newer movie; and as a citizen, if she didn't have to have the ability to have the government channel, she would go out and buy a satellite dish and pay less. Vice Mayor Dixon described her personal experience in redoing her front yard, which has a 25 year old cable box on the property line; she called the phone number on her bill, which she assumed most residents would do because they didn't have the same access to staff that the Council did, was told a supervisor would be out within 72 hours, and that was five weeks ago. Vice Mayor Dixon said that as far as she was concerned, there was no customer service and asked Mr. Marion about the situation in San Jose. Mr. Marion responded that Comcast is suing the City of San Jose over the procedure they are using for the public hearing, which is the first step in denying the franchise to Comcast. Vice Mayor Dixon inquired if Comcast was the only game in town. Mr. Marion said at the moment, they were the only cable provider in this particular area; there are some companies on the peninsula but at this time they were not looking at expansion in this area. Vice Mayor Dixon asked if there were Federal regulations that would prohibit a satellite company from posting our local government channel. Mr. Marion responded generally, because of the wide area of coverage from satellite, they aren't interested in securing local government programming. Vice Mayor Dixon asked if in the future the City could have its own station and do it ourselves. Mr. Marion said there are some municipalities that are doing it and generally a lot of the jurisdictions that provide utilities use that infrastructure to deliver those services as well.

Councilmember Gomez asked for confirmation that there was nothing solid residents could expect in terms of a credit for down time. Mr. Marion suggested that Mr. Garcia address that; however, the existing franchise did not have a specific provision for credit due to service outages but might be something staff would recommend in the renewal.

Eddie Garcia, Director of Government Affairs, Comcast, said they should provide top class service, agreed with the Council's comments, and said he did like to hear about problems because that was the only way they could fix them. With respect to Councilmember Livengood's and Vice Mayor Dixon's specific issues, he understood they didn't want to be treated special but if Mr. Marion had called him and said they were having problems, whether it be a Councilmember or resident, they would respond just as quickly as with a resident; they work very closely with Mr. Marion's office and if Bill calls him about someone having a problem, he knows that person probably has gone through a lot. Mayor Esteves said he didn't want to involve Bill's office and hoped Comcast could take care of it themselves, which would be a better solution. Mr. Garcia said that in the course of a day with over 400,000 customers, sometimes things don't work out right; they want to keep customers and work hard to take care of problems every day.

Mr. Garcia further stated they could work out in the renewal process for credits; their general concept is if you aren't getting the service, you shouldn't pay for it. Councilmember Gomez asked if that was something they should get the first time they call. Mr. Garcia said they couldn't tell if an individual home was having a problem but could detect a neighborhood so customers would have to tell them how long it had been out. Councilmember Gomez said the only gripe he had was the hours or windows in which someone will be out to repair service and hoped that was something that could be addressed in the franchise agreement. Councilmember Gomez called attention to the letter attachment having to do with a problem getting financial information and asked if that was still a problem. Mr. Garcia said they were working with the City's consultant.

Councilmember Livengood commented that Mr. Garcia heard his concerns and also heard that the conduct of his staff was always professional; with respect to the response he received that he couldn't get an appointment for six days, Councilmember Livengood said he thought that can't possibly be the level of service you expect your people to provide and asked how do we make sure – how do we fix this. Mr. Garcia said it was also not acceptable; one of the philosophies Comcast has that their predecessor didn't was in-house call centers and Comcast

has made a commitment to build three call centers in the Bay Area with one in Morgan Hill to serve the South Bay area to ease a lot of the customer service issues; in addition, the office he works in just hired a liaison between the call center and the operations and with the local call center, a lot of these problems will be solved.

Councilmember Livengood said with the amount of money Comcast was getting from Milpitas on a monthly basis, he felt Comcast should have staff in Milpitas; Milpitas should not be in a position of sharing a system with other cities; and there should be a dedication of resources to put enough trucks with techs on the street to deal with these problems within 24 hours. Councilmember Livengood further stated the issues raised by Vice Mayor Dixon regarding reception and pricing were legitimate, but he was looking for a commitment from Comcast that they will step up and say they will fix the problems in Milpitas within 24 hours, that was customer service and was what staff should negotiate.

Vice Mayor Dixon said she echoed what Councilmember Livengood was saying and asked how far do you go with increasing the cost with the service not increasing, along with it the poor movie selection and reception problems, before you run the risk of losing customers to Direct TV and Satellite. Mr. Garcia said the bulk of their costs were program costs, their increases reflect those costs, they were very cognizant of competition from satellite so the Vice Mayor was right, they will have to find ways to add programming.

Councilmember Polanski commented that a few months ago she downgraded her service, she was able to do it in 24 hours, and that was very quick service and helpful except that she couldn't have basic service without expanded basic service and that whole pricing system seemed strange to her.

Councilmember Gomez commented that as part of the franchise renewal process, the City's consultant was going to do a walking tour or inspection of the City to get an idea of the categories of violations, and he wanted to be sure the City will be sending those violations to Comcast. Mr. Marion responded that was correct, part of the franchise renewal language would take care of those that have been identified as well as other violations that might occur. Councilmember Gomez asked if the list had been forwarded to Comcast. Mr. Marion said not yet; it would be part of the draft needs assessment. Assistant City Manager Blair King explained that the primary purpose of the infrastructure review wasn't necessarily to identify specific problems but to assess the quality of the infrastructure in order to look at the amount of investment the cable provider has in the system; that information will be used to determine whether we feel the previous operator provided sufficient resources to maintain the infrastructure.

Mayor Esteves asked who in the City would be preparing the contract. Mr. Marion described the renewal process reporting that the Telecommunications Commission has reviewed the progress so far, there was a review team, all the surveys and data gathering for the needs assessment had been completed, the Telecommunications Commission last night approved the draft document, staff was waiting for two pieces of information to complete the draft franchise document, which would be presented to the Commission and come back to the Council for approval.

Mayor Esteves suggested the following: (1) establishing customer service standards; (2) the City be able to create remedies if the standards are not met; (3) the City be able to enforce customer protection laws beyond the Federal laws; and (4) make sure the standards are measurable so we are able to measure the operator's performance. Mr. Marion said the Mayor's comments were very much in line with what the Telecommunications Commission did last night.

Mayor Esteves thanked Mr. Garcia for coming and showing interest in working with the City. Mr. Garcia said he looked forward to working with the City.

UNFINISHED BUSINESS

7. Interim Senior Center

Principal Engineer Mark Rogge, using a PowerPoint presentation, reviewed the progress on interim Senior Center and reported on milestones since April 15, 2003, the work plan and proposed schedule, the modular building addition, site improvements, and interior improvements. Mr. Rogge explained that the original project included minor upgrades to the kitchen within the existing kitchen area; however, staff recommended a revised proposal to improve the interior of the building along with an expanded kitchen and game room at a revised estimated cost of \$190,000. Mr. Rogge reported the revised cost estimate, including the modular addition, site improvements, building improvements with an expanded kitchen, and contingency totaled \$690,000, of which \$117,000 in funding was proposed from CDBG funds.

Vice Mayor Dixon asked for an explanation as to why the use of CDBG funds just came up now instead of when this project started. Mr. Rogge responded originally the funds had been allocated to the permanent senior center.

Mayor Esteves commented that even though this would be an interim senior center, it was being made a Class A center. Councilmember Polanski said she agreed and thought it made a nice addition for some of the other projects that would be coming along in this area. Councilmember Polanski commented that there had been some difficulty with the acoustics at the interim senior center, she knew Vice Mayor Dixon had suggested contacting the School District about the baffles the District used to address noise, and she thought it might be appropriate to look at that for the open areas.

Mayor Esteves inquired if some additional operating and maintenance costs would be incurred. Mr. Rogge responded there would be additional electrical costs, it would be staffed with existing personnel, but there would be some additional operating costs with the expansion and staff would get that information back to the Council.

MOTION to approve an expanded interior renovation program, including an upgraded kitchen, and note receipt and file the progress report.

M/S: Polanski, Livengood.

Ayes: 5

NEW BUSINESS

8. Fee Waiver Request

Recreation Services Manager Bonnie Greiner reported that included in the Council's agenda packets was a request from the Milpitas Basketball League, an independently organized adult basketball organization, to waive \$1,290 in gym rental fees at the Sports Center for four Sundays until September 14 when their season ends. Ms. Greiner further reported the league with over 150 players has been paying the full rental fees at the Sports Center for the past four Sundays; the league previously played at Gill Park for the past two years, which created numerous complaints and concerns from the neighborhood residents; staff met with representatives of the league and offered to involve them in established Recreation Services Adult Basketball League programs and even add a new Sunday league to accommodate their needs; and they declined the invitation and opted to rent the gym as a private rental. Ms. Greiner noted the league currently charged its participants \$30. Ms. Greiner said staff was recommending denial of the request and implementation of the regular daily rental fees.

Mayor Esteves thanked the members of the league for coming and said he appreciated their being patient since this was the last item on the agenda.

Councilmember Gomez inquired if any other group was paying full fees for the large gym. Ms. Greiner responded there is an ongoing outside volleyball group and a lot of private rentals.

Bert Cruz, San Jose, representing the Milpitas Basketball Association, said they were a non-profit summer basketball league organized for the past two years with the help of members and people in the community; they play every Sunday, 8:00 am-1:00 pm; this year they played at Gill Park and have coordinated 15 teams consisting of 150 young men from Milpitas and San Jose; recently they were informed they could no longer play at Gill Park; signs were put up stating new rules; they were never were informed of any ordinance prohibiting them from playing at City parks; they have been playing at the Sports Center but the fees they have to pay were not in their budget; and they were requesting the Council give consideration to waiving some of the fees they were currently paying or any additional fees in the future. Mr. Cruz further stated as a group they realized the importance of having an event like this that brings families together and also provides positive recreation for youth as well as adults. Mr. Cruz commented on the benefits of having a local basketball league in helping to reduce teenage crime and teaching young adults to become responsible citizens as well as fine-tuning their skills and providing wholesome play for families to gather together. Mr. Cruz said he hoped the Council would support this very needed event.

Mayor Esteves pointed out that a league roster hadn't been provided to City staff. Mr. Cruz said 70-75% were Milpitas residents, he had some of the names and gave the list to the Mayor. Mayor Esteves responded that the list was not complete. Mr. Cruz said they only made it up today and they could gather the information if they were given a few days.

Mayor Esteves said he was really for healthy family activities like this basketball league and thanked the members for organizing this league; he would like the City to take the opportunity to use this group to reach more people and as long as the group participates and the City works with them to reach more people, he would like to support the group.

Councilmember Gomez asked how many members were in the group. Ms. Greiner responded approximately 150. Councilmember Gomez inquired about the cost of the City's league. Ms. Greiner responded resident teams pay \$375 for eight games, which amounted to \$37.50/player to play in the City's league. Councilmember Gomez commented that was pretty much comparable to what these league members were paying.

Councilmember Polanski commented that there was a residency requirement of at least 51% Milpitas residents when fees were waived and it was her understanding that this information had been requested from the group but that it had not been provided. Ms. Greiner said that staff had requested the information, it was not required when a private group rents the facilities; however, they were given the resident rate for the gym rental. Councilmember Polanski said that before she would agree to waive fees, she wanted to see a roster that showed over 51% of the members were Milpitas residents and, as the Mayor mentioned bringing in new leagues, she would like to see if something could be worked out for next year where this group could participate with the City leagues.

Mayor Esteves asked again how many members were Milpitas residents. Mr. Cruz responded as he said before - 75%. Mayor Esteves informed Mr. Cruz that he must submit that in writing before any fees could be waived. Mr. Cruz said they would make the list available.

Councilmember Livengood said he was a little confused on the priority list, this group seemed to fall into priority IV (residents) if they show they are 51% or more residents and asked if anyone else in this category (51% or more in category IV) was receiving rebates or having fees waived. Ms. Greiner responded no. Councilmember Livengood responded then this group would be the first ones to have fees waived. Ms. Greiner responded yes.

Councilmember Livengood noted that the group had already collected \$30 per player and asked if they would be willing to, if the Council was to suspend some or all of these fees, to tack on some cost next season to repay some of these fees to the City.

Mr. Cruz said they chose Gill Park because it was free, \$30 was too much for some members, and additional fees would be too much because some of their members were unemployed.

Councilmember Livengood said he needed to treat everybody fairly. One of the players said they were very happy playing in Gill Park but were kicked out. Councilmember Livengood said he understood the dilemma the group was in, they collected fees but the rules of the game changed; however, if the Council waived fees for this group, other groups would expect to have them waived, too. Councilmember Livengood pointed out, as Ms. Greiner had said, that to play in the City's league was about the same amount.

The player said they were offered that before but they are playing every Friday at the gym, the City offered them to join, they chose not to because it was expensive and that was why they were happy in Gill Park and if the cops told them their stereo was too loud, they would turn it off. Councilmember Livengood commented that in the final analysis, he didn't think Gill Park was an option, all the people he had talked to said it didn't fit in, he would like to find a way to get through this season and compensate the City, he understood where Mr. Cruz was coming from but the Council had to make sure it fit within the City guidelines and also be fair to everybody.

One of the basketball players said if they have to increase their fees, it would kill their league; \$30 was too much; a lot of people backed out when they charged \$30; and if they increased it, this would be their last season.

Vice Mayor Dixon asked why the group didn't want to be part of the City's league and if it was just financial alone. The player responded that was the biggest hindrance. Vice Mayor Dixon asked if the Council waived the fees for the remainder of this season, what were they were going to do next year, commenting that she was getting the sense that the group would like to go back to playing in the park for free. Vice Mayor Dixon said a Sunday league was mentioned and asked if it would be possible to look at one because there wasn't one right now. Ms. Greiner commented that the gym rental fees were not raised when other recreation fees were increased and staff would be coming back to the Council to look at raising the gym rental fees because these fees were extremely low. Vice Mayor Dixon suggested forming a new category Sunday league with criteria of eligibility to pay. Ms. Greiner said Recreation does have an income assistance program. Vice Mayor Dixon said she would be interested to see if a new category (income based Sunday league) could be developed but that would also mean that the group would have to be more inclusionary and open it to other people.

Mayor Esteves said he wanted to reach out to more residents to have healthy activities and thought it was a good opportunity to explore expanding City services.

Councilmember Polanski inquired how Vice Mayor Dixon's idea would affect the other adult leagues. Ms. Greiner responded staff would have to look at that because if one league is changed, it would only be fair to look at all programs. Ms. Greiner suggested that this group could also solicit corporate sponsors the same as other leagues do. Councilmember Polanski commented that to be fair, we would need to look at the fairness of all the programs and the economic impact it would have on the budget and on the entire program. Councilmember Polanski said there were a lot of needs in the City, one of them was neighborhood parks, and she thought we will need to look at the overall impact because we have been asking staff to cut back to balance the budget, fees have been increased, it was not that she wasn't sympathetic but she needed to look at the fairness throughout all the programs in the City.

MOTION to waive the fees for this year, with no commitment for next year, if the group is willing to work with staff in promoting this basketball league and consider being part of the City's league next year.

M/S: Esteves, Dixon.

Councilmember Gomez said the last thing he wanted to do was waive fees as he didn't want to give the community the impression that fees were implemented for the purpose of having them waived.

Councilmember Polanski said she was having a very difficult time supporting this because of the fairness and equity for all the other groups that haven't come before the Council to have their fees waived and who have been renting all year and also due to the fact that she didn't know how many Milpitas residents there were. Councilmember Polanski further stated they were in priority IV, she would be more willing to work with them to find a sponsor to raise the money to pay the fees rather than waive the fees because she felt it was not good public policy.

Mayor Esteves said he thought it was an opportunity for the City to reach more people and the start of the development of a new program to get more people involved in games and healthy activities.

Councilmember Livengood said at this stage, he couldn't support waiving the fees but would be willing to look at the idea Vice Mayor Dixon brought up which would include suspending the fees this year with the understanding the group would raise enough in the future to pay the City back. Councilmember Livengood further stated that there needed to be equity with everybody else that pays the fees so he couldn't support an out and out waiver but would be willing to support an option to suspend the fees for now with the understanding that they would be paid back at some time in the future.

Vice Mayor Dixon strongly encouraged the group to either come up with an \$8 per player fee or go out and find a corporate sponsorship or put it off a year.

VOTE ON MOTION: Ayes: 1 (Esteves) Noes: 4

MOTION to impose the fees but suspend them until such time as the Milpitas Basketball League is able to get corporate sponsorships or they are able to raise the money by increasing fees on their league members next year, with the expectation it will be paid back within a certain amount of time.

M/S: Livengood, Gomez.

Mayor Esteves asked the group if they understood the motion and were in agreement. The consensus of the group appeared to not be in favor of the motion.

Vice Mayor Dixon said she would be willing to do a cover letter for the group to assist them in getting sponsors.

VOTE ON MOTION: Ayes: 4 Noes: 1 (Esteves)

Mayor Esteves noted that the motion was approved but the group didn't have to avail themselves of it; Vice Mayor Dixon had offered to assist and he would also be available to help.

ADJOURNMENT

There being no further Council business, Mayor Esteves adjourned the City Council meeting at 10:10 p.m. in memory of Senior Advisory Commission Member Carlos Fabregas and Bea (Beatrice) Padovano, long-time volunteer with the Brown Bag Program.

Gail Blalock, CMC
City Clerk

The foregoing minutes were approved by the City Council as submitted on September 2, 2003.

Gail Blalock, City Clerk

Date